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Appl No. : 10/647,076 Confirmation No. 9698
Applicant : Yuichi Mori, et al.
Filed : August 22, 2003
Title : PLANT CULTIVATING CONTAINER AND PLANT CULTIVATING
METHOD
TC/A.U. : 3644
Examiner : Monica L. Williams
Docket No. : 51015/A400
Customer No. : 23363

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
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March 20, 2008

Commissioner:

Applicant requests review of the final rejection of claims 1-12 in the above-identified application. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal. The review is requested for the reasons stated below.

Claims 1-7 and 12 have been rejected under 35 U.S.C. §103(a) as allegedly obvious over Weder et al. (U.S. 5,363,592), in view of Schur (U.S. 3,097,787) in further view of Caldwell et al. (U.S. 2,773,050). Claims 8-11 have been rejected under 35 U.S.C. §103(a) as allegedly obvious over Sakai (JP 7-45169) in view of Weder et al. and Schur (U.S. 3,097,787) in further view of Caldwell et al.

In rejecting each of independent claims 1, 8, and 12, the examiner admits that each of the respective primary references fails to teach "a non-porous hydrophilic film comprising a material selected from the group consisting of polyvinyl alcohol and copolymers thereof." For this teaching, the examiner relies on Schur. However, the examiner's reliance on Schur is misplaced for three reasons.

First, Schur is directed to the art of packaging and wrapping films rather than the claimed field which relates to plant cultivating containers. Therefore, it is not analogous prior art, and may not be relied upon. (See applicant's November 15, 2006 response to the June 15, 2006 Office action, page 5, paragraph 2.)

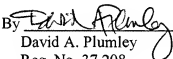
Second, rather than teaching a *non-porous* film that does not allow water to pass while allowing water vapor to pass, Schur teaches a perforated film that would inherently allow water to pass. (Id., at page 5, paragraph 3, bridging page 6.) On this point, the examiner has asserted that Schur does not teach a perforated film, but rather, teaches a "liquid impermeable" film, citing col. 2, lines 38-40 of Schur. However, applicant submits that while Schur may state that the disclosed film is somewhat resistant "to the passage of liquids which do not wet the film surface," nowhere does Schur indicate that the film is "liquid impermeable." Moreover, regardless of the words chosen by Schur, there is no escaping the fact that the film disclosed by Schur is *porous*, including *macroscopic openings* which would inherently permit the passage of water. (See Figs. 4 and 5 of Schur.) That such holes may somewhat repel the passage of liquids that "*do not wet the film surface*" is irrelevant when viewed in light of the entire disclosure including the drawings.

Third, while Schur may disclose a film of polyvinyl alcohol or copolymers thereof, the film disclosed by Schur is *water soluble* rather than the inherently *insoluble* film claimed. (See applicant's November 15, 2006 response to the June 15, 2006 Office action, page 6, first full paragraph.) In response, the examiner asserts that Caldwell et al. teach that the water solubility

characteristics of polyvinyl alcohol may be changed. However, applicant submits that like Schur, the teachings of Caldwell et al. are to films rather than to plant-cultivating containers. Therefore, the teachings of Caldwell et al. cannot be considered analogous art. Moreover, the examiner has cited absolutely no reason for the asserted substitution. In fact, the polyvinyl alcohol films of the Schur reference upon which the examiner relies are fundamentally intended to be "*completely soluble*." (Schur, column 5, lines 25-29, emphasis added.) Consequently, rather than teaching the substitution suggested by the examiner, the Schur reference *teaches away from* any substitution that would result in physical properties directly contrary to those intended by Schur.

Applicant submits that the examiner has failed to establish a prima facie case of obviousness as to independent claims 1, 8, and 12. Therefore, the independent claims are allowable, as are the remaining claims through their dependence on the allowable independent claims.

Respectfully submitted,
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